

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 01-0341
STATE GROSS RETAIL TAX
For Years 1998 AND 1999**

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ISSUES

I. State Gross Retail Tax—Adequate Documentation

Authority: 45 IAC 15-5-4; IC § 6-8.1-5-1; IC § 6-8.1-5-4

Taxpayer protests the proposed assessments of Indiana's State Gross Retail tax.

STATEMENT OF FACTS

Taxpayer is a sole proprietorship. Taxpayer sells and engraves trophies, plaques, and various award items. An audit found that in some instances the taxpayer sold these items without collecting the required sales tax and without an exemption certificate from the purchaser. Additionally; taxpayer provided tangible property and services, using various materials for these transactions, but did not provide the auditor with sufficient information to calculate the relative percentage for each type of transaction.

I. State Gross Retail Tax—Adequate Documentation

DISCUSSION

At the hearing, taxpayer's representative stated that further effort by the taxpayer had secured additional exemption certificates for the Department's review.

This issue revolves around the burden of proof in an audit situation, which IC § 6-8.1-5-4 defines as:

Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

Subject to the guidelines above, the Department will grant credit for the applicable transactions for which a valid exemption certificate has been provided. Also, as required by the above guidelines, no credit will be granted for transactions for which no certificate has been provided. Taxpayer provided no proof or means of determining a percentage of transactions subject to use tax; consequently the use tax assessment will not be adjusted. Pursuant to the above statute and the requirements of IC § 6-8.1-5-1 and 45 IAC 15-5-4, taxpayer has established a basis for reversal of part of the sales tax assessment, but no basis for an adjustment of the use tax assessment.

FINDING

Taxpayer's protest is sustained in part as to the sales tax assessment and denied as to the use tax assessment.

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